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10/038,910	01/08/2002	Helmut Fitz	2002_0004A	1343

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EXAMINER

KRAMER, DEVON C

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/038,910

Applicant(s)

FITZ ET AL.

Examiner

Devon C Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-21,23-32,37-41 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22 33-35 42-43 45 47-50 is/are rejected.
- 7) ☒ Claim(s) 36 and 46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

- 1) Claims 23-31 and 37-41 relate to a non-elected species and are withdrawn from consideration.
- 2) Submitted claims 32 and 44 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: They claim the grooves in the cylinder.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 32 and 44 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

- 3) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5) Claims 22, 33-35, 43, 45 and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Smalley (3904226).

In reference to claim 22, Smalley provides a device having a fluid cylinder in which two pistons (18, 19a) are arranged in a linearly displaceable manner, a piston rod for displacing one of the two pistons, an elastically deformable sealing member (21) is arranged between the two pistons which is deformed by being squeezed between the two pistons and pressed against a wall of the cylinder.

In reference to claim 33 and 47-48, Smalley inherently uses pneumatic fluid as a medium in the cylinder.

In reference to claims 34-35, Smalley provides the piston which is oppositely disposed to the piston with the piston rod is provided with a seal which seals the cylinder wall.

In reference to claims 43, Smalley provides a braking and damping device comprising: a fluid cylinder (6) having a cylinder wall; two pistons (18, 10) arranged to be linearly displaceable in the cylinder; a piston rod (12) for displacing the pistons; and an elastically deformable sealing member (21) arranged between the pistons such that when the piston rod displaces one of the pistons, the sealing member is squeezed between the two pistons and pressed against the cylinder wall.

In reference to claim 45 and 49, Smalley et al teaches a solid body for the friction-braking member.

In reference to claim 50, Smalley et al teaches a solid rigid body for the pistons.

6) Claims 22, 33-35, 43, 45 and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Corcoran et al (5257680).

In reference to claim 22, Corcoran et al provides a device having a fluid cylinder in which two pistons (22) are arranged in a linearly displaceable manner, a piston rod (20) for displacing one of the two pistons, an elastically deformable sealing member (14) is arranged between the two pistons which is deformed by being squeezed between the two pistons and pressed against a wall of the cylinder.

In reference to claim 33 and 47-48, Corcoran et al inherently uses pneumatic fluid as a medium in the cylinder.

In reference to claims 34-35, Corcoran et al provides a second of the pistons with a seal (14) which seals with the cylinder wall, the seal connecting the two pistons.

(Figure 5)

In reference to claims 43, Corcoran et al provides a braking and damping device comprising: a fluid cylinder (32) having a cylinder wall; two pistons (22) arranged to be linearly displaceable in the cylinder; a piston rod (20) for displacing the pistons; and an elastically deformable sealing member (14) arranged between the pistons such that when the piston rod displaces one of the pistons, the sealing member is squeezed between the two pistons and pressed against the cylinder wall.

In reference to claim 45 and 49, Corcoran et al teaches a solid body for the friction-braking member.

In reference to claim 50, Corcoran et al teaches a solid rigid body for the pistons.

7) Claims 22, 33-35, 43, 45 and 47-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Beyene et al (6443437).

In reference to claim 22, Beyene et al provides a device having a fluid cylinder in which two pistons (26, 60) are arranged in a linearly displaceable manner, a piston rod for displacing one of the two pistons, an elastically deformable sealing member (50a) is arranged between the two pistons which is deformed by being squeezed between the two pistons and pressed against a wall of the cylinder.

In reference to claim 33 and 47-48, Beyene et al inherently uses pneumatic fluid as a medium in the cylinder.

In reference to claims 34-35, Beyene et al provides a second of the pistons with a seal (50a) which seals with the cylinder wall, the seal connecting the two pistons.

In reference to claims 43, Beyene et al provides a braking and damping device comprising: a fluid cylinder having a cylinder wall; two pistons (26, 60) arranged to be linearly displaceable in the cylinder; a piston rod (20) for displacing the pistons; and an elastically deformable sealing member (50a) arranged between the pistons such that when the piston rod displaces one of the pistons, the sealing member is squeezed between the two pistons and pressed against the cylinder wall.

In reference to claim 45 and 49, Beyene et al teaches a solid body for the friction-braking member.

In reference to claim 50, Beyene et al teaches a solid rigid body for the pistons.

***Claim Rejections - 35 USC § 103***

8) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9) Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smalley (3904226), Corcoran et al (5257680), or Beyene et al (6443437) in view of Muller (US 2002/0066629).

In reference to claim 42, Smalley, Corcoran et al, and Beyene et al teach all of the limitations as cited in the 102 rejections to claim 22 above, but lack the teaching of using their devices on movable pieces of furniture. Please note that the devices of Smalley (3904226), Corcoran et al (5257680), and Beyene et al (6443437) are capable of being used on movable pieces of furniture.

Muller teaches a damper device used on movable pieces of furniture.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the devices of Smalley, Corcoran et al, or Beyene et al on movable pieces of furniture as taught by Muller merely to provide a means to damp extreme forces which may occur from a door or cabinet closing.

***Allowable Subject Matter***

10) Claims 36 and 46 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

11) Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Conclusion***

12) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 703-305-0839. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DK

March 23, 2004

*Robert A. Siconolfi* 3/29/04  
ROBERT A. SICONOLFI  
PATENT EXAMINER